



Jeremiah W. (Jay) Nixon, Governor • Harry D. Bozoian, Director

DEPARTMENT OF NATURAL RESOURCES

dnr.mo.gov

DEC 30 2016

Mr. Mark Hague
Regional Administrator
USEPA Region 7
11201 Renner Blvd.,
Lenexa, KS 66219

Re: Request for Review of Missouri's Tanks Corrective Action Regulatory Framework

Dear Mr. Hague:

By now, I trust you have seen the Missouri Department of Natural Resources' (department) joint response with the Petroleum Storage Tank Insurance (PSTIF) Board of Trustees requesting an extension to respond to the Environmental Protection Agency's (EPA) draft report for the Tanks corrective action program review, signed by department director Harry Bozoian and PSTIF Board Chair Don McNutt. Director Bozoian believes the best approach is to work with the Board and the Fund to develop a joint comment letter. Consequently, I anticipate you will be meeting with the department, PSTIF and the Board and receiving a response in early 2017 as indicated in the letter.

The program review evaluated several tanks remedial sites and focused on the progress at those sites in terms of PSTIF/department interactions and timeliness of activities toward "no further action" at a given site. An overarching theme of the report highlights the longstanding problem whereby PSTIF's actions result in undue influence over cleanup decisions (which was also highlighted in a department presentation to the Board in July of this year). While EPA's feedback on these matters is extremely valuable and will provide helpful information toward improving our processes, it does not address a fundamental structural problem. It is the inadequacy of the department's Tanks corrective action regulatory framework that allows PSTIF to utilize regulatory gaps to refuse payment for corrective action activities deemed appropriate by the department. This in turn results in the PSTIF's ability to influence the conduct of cleanup.

I will be retiring from state government effective January 1, and thus will not be actively involved in the continuing discussions. Consequently, as someone who was intimately involved in the 2009 through 2013 rulemaking efforts, I felt it important to highlight this problem. Further **I strongly recommend EPA undertake a detailed review of this regulatory framework as part of the SPA process to determine whether the rules, as implemented by the department and influenced by PSTIF, are adequately protective.**

The rules in question are the culmination of over a decade of stakeholder discussions. There are literally reams of documents and emails detailing the extensive stakeholder processes, countless comments and responses on draft and proposed rules, public hearing transcripts, etc. It would likely take a team of EPA staff many weeks to compile, analyze and reconstruct this public record in a systematic way. With that said, it takes only a few key documents to outline the important aspects of the last rulemaking.

Mr. Mark Hague
Page Two

Because the federal rules tend to be vague in several areas, it has been difficult to identify explicit requirements in the federal rule to point out the deficiencies we believe exist in key areas of our state rule. Ron Leone, with the Missouri Petroleum Marketers and Convenience Store Association (aka MPCA, which is a private lobbying association), in collaboration with Carol Eighmey, a state employee and Executive Director of the PSTIF, successfully took advantage of this fact, leading to final rules heavily swayed to their positions. Most notably, this affects requirements related to site characterization, neighbor notification and long-term stewardship. These deficiencies, especially when coupled with the PSTIF's influence over day-to-day activities, results in a state framework unable to meet the minimum requirements of the federal regulatory framework. The attached documents highlight the department's position relative to the MPCA/PSTIF position and provide a very high level chronology of the key milestones of the last rulemaking.

December 31, 2016, is my last official day with the Missouri Department of Natural Resources. Over the last 22 years, I have been incredibly blessed to have worked among colleagues in the department and EPA Region 7 with a passion for protecting public health and the environment. I certainly include you in that group and wish you well in your future endeavors. If you or your staff have any questions about this request, please contact Steve Feeler at (573) 751-0763. Mr. Feeler will be named Acting Director of the Division of Environmental Quality effective January 1, 2017.

Sincerely,

DIVISION OF ENVIRONMENTAL QUALITY

A handwritten signature in black ink, reading "Leanne Tippet Mosby". The signature is fluid and cursive, with the first name "Leanne" being the most prominent.

Leanne Tippet Mosby
Director

LTM:so

Attachments:

1. High-level chronology of Tanks Risk-based Corrective Action (RBCA) rulemaking 1995 through November 2009, with attached October 15, 2009 from Bill Bryan to Pat Gleason that is referenced on page two in the last bullet.
2. May 22, 2009 briefing to Mark Templeton from Bob Geller (B9490 HWP) regarding the department's proposal and competing PSTIF proposal.
3. September 16, 2009 letter from Robert Geller to Cindy Kadlec, JCAR, that provides additional detail of competing department and PSTIF rule proposals.
4. Tanks RBCA rules August 20, 2009 public hearing transcript.
5. September 14, 2007 memo from Ken Koon to Dan Schuette regarding delineation criteria and RAFU.
6. Various emails detailing the continued disagreements between the department and PSTIF/MPCA with respect to the proposed rules after the HWMC withdrawal of the 2009 rules (in reverse chronological order) including a September 20, 2011 letter from Sara Pauley to PSTIF/MPCA indicating how the department planned to move forward on key policy issues with respect to the rules (ultimately, the rules were not finalized as outlined in this letter). This is a very small fraction of the record of discussions, but is intended to highlight some of the key disagreements and the course the rules eventually took.
7. Email provided to Leanne Tippet Mosby by Carol Eighmey showing how PSTIF outlined its opposition (in 2006) to restrictive covenants to Ron Leone, MPCA. Ms. Eighmey provided this to Ms. Tippet Mosby when she suggested to PSTIF the easiest path for restrictive covenants may be to include them in the statutory framework provided by Missouri Environmental Covenants Act (MoECA).

CHRONOLOGY OF TANKS RBCA RULEMAKING 2008 THROUGH 2013

The following table provides a summary of the key events in the Tanks Rulemaking process from 2008 to 2013. The table is organized by year, with the first column listing the year and the subsequent columns providing a brief description of the event. The events are listed in chronological order, starting from the initial rulemaking process in 2008 and ending with the final rulemaking in 2013.

Year	Event
2008	Initial rulemaking process begins.
2009	First public hearing held.
2010	Second public hearing held.
2011	Third public hearing held.
2012	Fourth public hearing held.
2013	Final rulemaking process completed.